

TESTIMONY OF DERK W. BECKERLEG AND MICHEAL R. LOHMEIER
DECEMBER 9, 2015

- Derk W. Beckerleg is an attorney and the Managing Partner of the Municipal Practice Group of the law firm of Secrest Wardle, located in Troy, Lansing and Grand Rapids, Michigan.
 - Mr. Beckerleg has represented municipalities before the Michigan Tax Tribunal for twenty-six (26) years.
 - Mr. Beckerleg has given several presentations about the Michigan Tax Tribunal to various organizations including, but not limited to, the Michigan Association of Municipal Attorneys, the Public Law Section of the Michigan State Bar, the Michigan Municipal Treasurer's Association, the Oakland County Association of Assessing Officers and the Great Lakes Chapter Appraisal Institute.
 - For the last four years, Mr. Beckerleg has taught the class on the Michigan Tax Tribunal at the Michigan Assessors Association Continuing Education Schools.
 - In 2012, Mr. Beckerleg authored a chapter entitled "Property Taxation" for the Michigan Municipal Law Book published by the Institute of Continuing Legal Education and Mr. Beckerleg was also a contributing author to the Michigan Municipal League's publication entitled "The Michigan Tax Tribunal, an Overview for Municipal Officers and Practitioners."
- Micheal R. Lohmeier is currently the Assessor for the City of Auburn Hills.
 - Mr. Lohmeier is a MMAO (4), which is a Michigan Master Assessing Officer, formerly known as a Level 4 Assessing Officer which is the highest level of Assessor certification and he is also a Certified General Real Estate Appraiser Licensee, the highest certification for appraisers.
 - Mr. Lohmeier has been the Assessor for the City of Auburn Hills from 2010 to present.
 - Mr. Lohmeier was a Judge at the Michigan Tax Tribunal in 2005 and 2006.
 - Mr. Lohmeier has given several presentations to various organizations regarding valuation and practice issues pertaining to the Michigan Tax Tribunal and has also written articles with respect to appraisal practice and techniques.
- From January 23, 2012 through January 26, 2012 Mr. Beckerleg and Mr. Lohmeier represented the City of Auburn Hills in a four-day long Trial before the Michigan Tax Tribunal in the case of *Target Corporation v City of Auburn Hills*, which case involved the valuation of a Target big box store in the City of Auburn Hills for the 2009 through 2011 tax years. The Michigan Tax Tribunal in the Target case, as it did in virtually all other cases the Michigan Tax Tribunal has tried regarding big box stores, ruled against the City and held that such big box stores must be valued as "vacant and available," utilizing the so-called "Dark Store" theory.
- Abandonment of the dark store method of valuing big box stores through legislation or otherwise, would not result in Constitutional and/or other legal issues, but would in fact, be more in compliance with Michigan's definition of "true cash value" as contained in the Michigan General Property Tax Act at MCL 211.27.

- MCL 211.27 defines “true cash value” in pertinent part as “the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price that could be obtained for the property at a private sale and not at auction sale except as otherwise provided in this section, or at a forced sale.” Put another way, a property’s true cash value is to be established based on “an arm’s length transaction.”
- Valuing a big box store that is currently operating and flourishing by treating that big box store property as vacant and available and using sales comparables that are dark stores is not valuing the big box store property at the usual selling price where the store is located and therefore, utilizing a Dark Store theory to value such operating and occupied big box stores is not in compliance with the statutory definition of true cash value as contained in MCL 211.27. Furthermore, pursuant to MCL 211.27, when determining true cash value, the assessor “shall also consider the advantages and disadvantages of location ... zoning, existing use and present economic income of structures ...”. Valuing an operating and successful big box store as vacant and available and by utilizing dark store sales comparables does not take into consideration the advantages of location, the existing use of the operating and occupied big box store and/or the present economic income of the building.
- Utilizing a dark store as a sales comparable for an operating and occupied big box store property does not result in establishing the statutorily defined true cash value of an operating big box store property in an arm’s length transaction scenario due to the fact that abandoned or dark big box stores are often purchased and then occupied by “second-tier users” such as churches, flea markets and on occasion, even municipal users, but rarely are occupied by another big box user, with the reason for that being that big box users almost always place deed restrictions or restrictive covenants on their big box store properties, prohibiting other big box stores and/or users from operating and/or occupying one of their former and/or abandoned big box store properties.
- The net effect of the big box store users almost always placing a deed restriction and/or restrictive covenant on their big box store properties prohibiting other big box stores from operating and/or occupying one of their abandoned and/or former stores is that the big box store users have essentially, by their own actions, created an artificial market by lowering the value of those dark stores by severely limiting those users who could occupy the abandoned and/or former big box stores. Furthermore, utilizing a dark store property that is deed restricted to prohibit other big box users from occupying it as a sales comparable for an operating and successful big box property isn’t going to establish the fee simple true cash value of that operating and successful big box store.
- Utilizing a dark store that is deed restricted to prohibit future big box users as a sales comparable for an operating and occupied big box store property is improper as those properties have different highest and best uses, with the highest and best use of the big box store property being its continued operation as a big box store, while the highest and best use of a deed restricted dark store is impacted and different as it is subject to a clearly inferior marketplace and therefore it does not have the same highest and best use as the operating big box store property.
- The Michigan Tax Tribunal’s current method of valuing operating big box store properties by treating them as vacant and available, and by utilizing deed restricted dark stores as sales comparables, does not establish the true cash value of said operating stores as true cash value

is defined in MCL 211.27 and furthermore, results in suspending and/or ignoring of reality as an operating big box store is in fact, not vacant and available, and the utilization of deed restricted dark stores results in utilizing an artificial market of lower values, that has been created by the big box users themselves and works a severe inequity to the municipalities and the assessors that have to value operating and occupied big box stores.

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